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No. 92-1189

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

COLUMBUS-AMERICA DISCOVERY GROUP, INC.,
Petitioner,

v.

ATLANTIC MUTUAL INSURANCE COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF THE FLORIDA BAR ADMIRALTY LAW COMMITTEE IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF THE FLORIDA BAR ADMIRALTY LAW COMMITTEE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

The Florida Bar Admiralty Law Committee moves, pursuant to Rule 37.2 of the Rules of this Court, for leave to file the attached brief as *amicus curiae*. Counsel for the petitioner has consented to the filing of this brief; counsel for the respondents have refused consent.

The Florida Bar is an organization of attorneys licensed to practice within the State of Florida and includes members of the judiciary, academicians and others who are interested in the development and application of the

law. The Admiralty Law Committee (Committee) is a subsection of the Florida Bar. The Committee's members represent all interests in the field of admiralty and maritime jurisprudence. The Committee is especially attuned to developments in the law of finds, wrecks and commercial salvage, and the substantial and ever-increasing litigation over these matters that is occurring in the state and federal courts within Florida and other jurisdictions.

Due to the importance of the issues raised by this case for admiralty and maritime law, the Board of Governors of the Florida Bar has authorized the Admiralty Law Committee to file this Brief in support of granting the Petition for Writ of Certiorari. The Committee strongly believes that this case is an appropriate vehicle for resolution of a nationally important maritime issue that must be determined in the developing industry of high-technology maritime recovery.

Moreover, the Florida Bar recognizes that its members have responsibilities that extend beyond their ethical duties to represent clients as zealous advocates (and their concomitant duties to their clients of competence, confidentiality and professionalism). The members of the Florida Bar also recognize that, with their privilege of practicing the profession of law, also comes the responsibility to the public to assist in improving the legal system.

The Fourth Circuit's holding that the determination of whether property has been abandoned in effect requires an express disclaimer of title—and is anything other than a question for the admiralty court to decide, based on all of the relevant facts and circumstances, underscores an untenable conflict among the circuits and state courts on a very basic issue of admiralty law. By limiting the concept of abandonment of claims to the hull, tackle, apparel, engines and cargo to cases of express renunciation of title, the decision below forecloses any supplementation of the law of salvage by the law of finds. In doing so, the majority opinion conflicts with the opinions of the courts of appeals, district courts, and state su-

preme courts. Thus, the majority opinion below impinges on the uniformity of admiralty law and the application of general maritime law; and, if allowed to stand, the majority opinion will invite spurious claims to every long-lost item of maritime recovery.

For these reasons, the Court should grant this motion for leave to file the attached brief *amicus curiae* in support of the petitioner.

Respectfully submitted,

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QUESTION PRESENTED

May admiralty courts continue to infer abandonment of long-lost shipwrecks from the passage of many decades, and accordingly award ownership of a shipwreck to those who discover, recover and conserve it under the law of finds; or must courts award title to purported insurers and their successors who claim ownership of a shipwreck under the law of salvage on grounds that abandonment can never be found absent clear and convincing evidence that the purported owners expressly renounced title?

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BRIEF AMICUS CURIAE OF THE FLORIDA BAR ADMIRALTY LAW COMMITTEE IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST

The Florida Bar is an organization of attorneys licensed to practice the profession of law within the State of Florida. It also includes members of the judiciary, academicians and others who are interested in the development and application of the law.

The Admiralty Law Committee is a subdivision of the Bar. Its members represent all interests in the field of admiralty and maritime jurisprudence. Members of the Committee regularly practice in, and are conversant with, the full breadth of issues, policy considerations and trends in admiralty and maritime law, including: marine insurance; cargo and the law of carriage; charter parties; collision; salvage; finds and wreck law; general average;

maritime liens and ship finance; limitation of liability; maritime pollution and products liability; the law of the sea and international maritime law; the law of marine technology and deep ocean discovery; the rights of seamen and maritime workers; maritime personal injury law; governmental activity and liabilities in shipping; and other related forms of maritime law. The Committee is fortunate to have special expertise in shipwreck and finds law, including its interrelationship with commercial salvage law, and substantial and ever-increasing litigation over these matters is occurring in the state and federal courts within Florida. Among the related cases that have occurred in our State are *Treasure Salvors, Inv. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 640 F.2d 560 (5th Cir. 1981); *Klein v. Unidentified Wrecked and Abandoned Sailing Vessel*, 758 F.2d 1511 (11th Cir. 1985); *MDM Salvage Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 631 F. Supp 308 (S.D. Fla. 1986); *Cobb Coin Co. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 525 F. Supp. 186 (S.D. Fla. 1981); *State v. Massachusetts Co.*, 95 So.2d 902 (Fla. 1956), *cert. denied*, 355 U.S. 881 (1956); *Howard v. Sharlin*, 61 So.2d 181 (Fla. 1952).

The Board of Governors of the Florida Bar have authorized the Admiralty Law Committee to file this Brief in support of granting the Petition for Writ of Certiorari. The current Amicus Guidelines of the Florida Bar state that a Committee can act as an amicus curiae if (1) doing so is not inconsistent with an official position of the Bar; (2) the issue is within its area of subject matter interest; and, (3) the issue does not carry the potential of deep philosophical or emotional division among members of the Bar.

The Board of Governors has concluded that this case raises an important question of admiralty and maritime law in need of resolution by the Court. The issues, not the least of which is the application *vel non* of the maritime law of finds to supplement the law of salvage

with regard to determining title to items recovered from long-lost, abandoned shipwrecks are under current case law from the lower courts, hopelessly in conflict and in critical need of guidance from the Court. The consequences are legion as to the case load and forum shopping concerns of admiralty courts, the public administration of justice, effectuation of the intent of the Congress and the many state legislatures, potential liabilities of the federal and state governments, substantial amounts of sovereign property and protection and conservation of historic shipwrecks for present and future generations.

Stated differently, members of the Florida Bar have responsibilities that extend beyond their ethical duties to represent clients as zealous advocates (and their concomitant duties to their clients of competence, confidentiality and professionalism). They also have a fundamental duty to the society which has granted them the privilege of practicing their profession: the responsibility to assist objectively and impartially in improving the legal system. With a view to the weight they accord that responsibility to the public, and in light of (1) the landmark significance of the *S.S. Central America* case, (2) the intolerable conflict among the federal circuits and the state supreme courts on the substantial federal question presented, (3) the necessary effects of the decision below on federalism, federal-state cooperation, and state and federal property rights, (4) the practical impact on the case load of admiralty courts and the administration of justice, and (5) the national and international importance of the admiralty and maritime concerns raised, the Florida Bar Admiralty Law Committee respectfully urges the Court to grant certiorari.

REASONS FOR GRANTING THE WRIT

In addition to the reasons for granting the Petition stated in the Petition for Writ of Certiorari, the Committee is concerned that the existence of continued initiative in the private sector and the availability of pri-

vate risk capital is severely affected by the confusion, inconsistency and conflict among the federal circuits illustrated by the decision below. Not the least of these: although the *S.S. Central America* shipwreck was admittedly abandoned by its former owners, crew and master, the Fourth Circuit panel concluded that none of the cargo on such an abandoned long-lost shipwreck could be found by the district court to have been "abandoned" within the meaning of federal admiralty law, absent "an owner's express declaration abandoning title." Pet. App. 27(a). One of the many practical results of the Fourth Circuit's decision is that, once the finder has shown that the vessel itself was abandoned, it still has some "continuing" additional burden of proof to show the abandonment of *each and every item* recovered from the admittedly abandoned vessel, which must be proved by clear and convincing evidence of an express disclaimer of title. The jurisprudential and practical effects of the decision below create intolerable inconsistencies among the federal circuits, warranting the Court's attention.

I. THE COURT SHOULD GRANT REVIEW TO RESOLVE AN INTOLERABLE CONFLICT AMONG THE CIRCUITS AND THE STATE SUPREME COURTS

A. The Decision Below

The district court found that the wrecked vessel was abandoned and all items recovered from the wrecked and abandoned vessel had been abandoned by their owners and purported subrogees of the owners. The trial court rejected the proposition, put forward by the respondents, that no abandonment of portions of the cargo could be found because, "They [claimants] never signed any documents so stating, never made any public announcement of abandonment and have always claimed to own the gold." Pet.App. 97(a). The district court applied the maritime law of finds to supplement the law of salvage and awarded title to all recoveries to Columbus-America as the finder of the admittedly abandoned *S.S. Central America*. Pet.App. 102(a).

The majority of a sharply divided three-judge panel of the Fourth Circuit rejected the clear line of authority applying the law of finds to the law of salvage regarding long-lost shipwrecks. The majority held that these precedents are applicable only where no purported previous owner appears. Pet.App. 22(a). The court of appeals held that where any party purporting to claim ownership to any items salvaged from an admittedly abandoned shipwreck comes forward, the abandonment of that item cannot be found unless the finder proves by "clear and convincing evidence" that the claimant/owner or person holding a subrogation interest has made an "express abandonment". Pet.App. 20(a), 27(a). The majority Opinion of the Fourth Circuit held that the only thing that would satisfy its strict test of abandonment was "an owner's express declaration abandoning title" or the owner's failure to appear. Pet.App. 27(a). Since the insurance companies or their successors had either lost or destroyed all of their documents of title with regard to the claims, payment of the claims, assignment of subrogation interests, etc., (e.g., bills of lading, insurance policies, negotiable instruments), Petitioner was obviously unable to show that the insurance companies or their subrogees had signed a "formal document" or made a "public announcement" disclaiming their subrogation rights to some portion of the insured cargo, as required by the court of appeals.

The court of appeals accordingly remanded the case for the strict application of the law of salvage "unfettered" by the law of finds. The majority decision requires a determination of what "share" of the salvaged cargo each insurer should receive. The Court of Appeals held that the insurance companies could assert rights only to the "commerical shipments" of gold (insured or not). Thus, Columbus-America Discovery Group was entitled, in theory, to claim all of the passenger possessions which, "almost surprisingly" no descendent had attempted to claim. Pet. App. 28(a). To claim passenger possessions,

however, the decision below would require Columbus-America to prove, despite the total lack of documentation and the one hundred-thirty (130) years the items had spent beneath the ocean, that each item recovered from the wrecksite by Columbus-America was "more likely than not" a passenger possession, or "surplus" of gold over and above the value of the commercial shipment. *Id.*

Instead of finding that items salvaged from an admittedly abandoned shipwreck are themselves presumptively abandoned, the split panel held that title to all recoveries of gold was presumptively subrogated to the insurance companies or their purported successors who allegedly laid claims on some unidentified portion of the commercial cargo.

In a well-reasoned dissent, Judge Widener stated that requiring an "affirmative act" and express disclaimer of title for abandonment "cannot be reconciled" with the long line of maritime and common-law authority establishing the abandonment of a wreck (including the sunken vessel's tackle, cargo, apparel, etc.). He noted admiralty courts could infer abandonment from all the surrounding facts and circumstances. Pet. App. 42(a)-52(a). Judge Widener pointed out that the majority decision "breaks with the law of every other Circuit that has decided the question." Pet. App. 54(a). Judge Widener also criticized the majority for ignoring the Supreme Court's mandate (to the very same panel, on an earlier case) on review where there is a factual finding (abandonment) by the district court, and he expressed grave concerns over the majority's making factual findings on appeal. Significantly, Judge Hall (who had joined Judge Russell in the majority opinion) voted for consideration of the weighty issue by the full court in court of appeals' 5-7 split denial of rehearing *in banc*. Pet. App. 110(a)

B. The Conflict Among the Circuits

In addition to its many other errors, the majority opinion below makes the mistake of looking at the law of

finds as abolishing the law of salvage, rather than augmenting and fortifying it. Specifically, in conflict with the First, Fifth and Eleventh Circuits, as well as various state supreme courts, the majority opinion:

> —requires the first finder in possession to establish abandonment of each and every item recovered from the wrecksite of the abandoned vessel by express disclaimer of title.
>
> —allows all intervenors claiming an ownership or subrogation interest to make a claim against a commingled "salvage pool" composed of unidentifiable portions of cargo and passenger possessions that cannot be linked to specific persons.
>
> —applies an incorrect burden of proof to the claim of an intervenor against an item of salvage from an admittedly abandoned shipwreck site.
>
> —applies an incorrect standard of review to the District Court's factual findings concerning the presumptive abandonment of items recovered from an admittedly abandoned vessel.

By limiting the concept of abandonment of claims to the hull, tackle, apparel, engines and cargo (of an admittedly abandoned vessel) to cases where there has been express renunciation of title, the majority opinion effectively forecloses any supplementation of the law of salvage by the law of finds. In doing so, the majority opinion conflicts with the opinions of the courts of appeals, district courts, and state supreme courts. If allowed to stand, the majority opinion invites spurious claims to virtually every long-lost item of maritime recovery in the future.

The majority opinion fails to address admiralty's "personification" of a vessel or its "unitary approach" to wrecks, which heretofore treated a shipwreck site and its components as a legally unified *res*. The assault on common sense by the majority opinion is apparent when it is realized that the *S.S. Central America* is an admittedly abandoned ship wreck. While (at least in theory) a sin-

gle owner of an entire shipwreck or the owner of a subrogation interest to an entire wreck might arguably think to "affirmatively abandon" such an ownership or subrogation interest, it defies common sense and ordinary experience to suggest that an insurance company would ever, let alone be expected to, expressly disclaim subrogation rights to some unidentified part of an allegedly insured portion of a vessel, hull, tackle, cargo, passenger effects (whether personal articles, deck machinery, or other tangibles) which may have been lost on a vessel. The majority's holding would require the finder of a long-lost shipwreck to prove that even *after* an affirmative abandonment of a vessel by its owners, each insurance company expressly declare that it was abandoning its subrogation rights to whatever portion(s) of the hull, tackle, appurtenances, cargo, etc., of the abandoned vessel it had insured. The lapse of time, fading of memories, disappearance of witnesses and loss or distruction of documents makes such a test impractical, and even absurd, on its face.

II. THE COURT SHOULD GRANT REVIEW BECAUSE OF THE SERIOUSLY HARMFUL PRACTICAL EFFECTS OF THE DECISION BELOW

A. Effects on Federalism, State and Federal Property Rights and Historic Preservation

Although the Abandoned Shipwreck Act of 1987, 43 U.S.C. § 2101 *et seq.* (Supp. 1992), does not apply to the *S.S. Central America*, which is outside the territorial jurisdiction of any state, the practical effect of the Fourth Circuit's decision will be to emasculate the Act, with immediate, intolerable and in many instances irreparable effects on federalism, state and federal property rights, and historic preservation. Under the Abandoned Shipwreck Act, the United States asserts title to "abandoned shipwrecks" within the (former) three mile territorial sea outside the nation's jurisdictional baselines. Except for those on federal reservations and parks, the United States then conveys title (and responsibility for preserva-

tion and management) to the States within whose territorial waters each lies.

Under The Act, the ownership or assertion of title to any shipwrecked property depends entirely on the construction of the term "abandoned shipwreck," which triggers the Statute's application. Nowhere in The Act is the term "abandoned" defined. The legislative history indicates that the federal statute was constructed on the accepted definition of abandonment that has been developed by the federal admiralty courts under article III, section 2 of the United States Constitution.

The legislative history demonstrates "the term abandoned does not require the original owner to actively disclaim title or ownership." H.R. Rep. No. 514(I), 100th Cong., 2d Sess. 2, *reprinted in* 1988 U.S.C.C.A.N. 365, 366. "Abandonment or relinquishment of ownership rights may be implied or otherwise inferred." *Id.* The decision below thus destroys the federal-state property interests in such shipwrecks and subjects state and federal governments to a host of title and inverse condemnation lawsuits. Conflicts and litigation will be multiplied, with continuing uncertainty and disagreement in different venues over the Abandoned Shipwreck Act and its effects. These are precisely the results the Congress tried to end because of then-existing conflicts of the circuits.

B. Effects on Private Funding for Scientific Research and Development

The opportunities for scientific research and development on long-lost and abandoned shipwrecks are tremendous. Such cultural deposits are unique laboratories, in many instances teeming with life forms and mysteries never before explored.

But the conflict among the circuits squanders opportunities for scientific research and development by making uncertain and unpredictable the financial incentives associated with technologically advanced discovery and recovery, thereby making it difficult, if not impossible, to at-

tract the enormous sums of private venture risk capital needed for such challenging ventures.

Conflict and confusion as to the applicable legal regime have a debilitating effect on deep-sea discovery and recovery. Without predictable legal rights, discoverers are paralyzed and unable to attract the huge sums of capital required for these inherently risky ventures. *See* 30 U.S.C. § 1401(a)(13) (uncertainty in legal regime discourages private investment). The Court's prompt attention is warranted to allow scientific research and development to resume and to progress.

C. Effects on the Administration of Justice By Admiralty Courts

The application of the law of finds to supplement the law of salvage was touched upon, but never resolved, by the Court in *Florida Department of State v. Treasure Salvors, Inc.*, 458 U.S. 670, 677 & n.8 (1982) (Stevens, J.) (mentioning district court's application of the doctrine of *animus revertendi*, and the consequent vesting of ownership of items from long-lost shipwrecks in the finder).

The admiralty court's rationale for applying the law of finds to the law of salvage under the doctrine of *animus revertendi* is best explained by Judge Walter Hoffman's seminal 1960 decision *Wiggins v. 1100 Tons, More or Less, of Italian Marble*, 186 F. Supp. 452 (E.D. Va. 1960). Judge Hoffman reasoned that when the location of certain property is lost at sea and its owner makes no effort to go and find it, with the passage of time, non-use and based on the other facts and circumstances, admiralty courts may infer that the property—

> ceased to be the property of any person, and thenceforth is no man's property, unless and until it is reduced to possession within intent to acquire title to, or ownership of it. It may, accordingly, be appropriated by anyone, if it has not been reclaimed by the

> former owner, and ownership of it vests, by operation of law, in the person first lawfully appropriating it and reducing it to possession with intent to become its owner provided, it has been said, the taking is fair.

186 F. Supp. at 456. Under law of finds, a shipwreck site and all contents whose owner has no hope or intention of returning, may, based on the circumstantial evidence, be found to be abandoned and the party who finds it acquires ownership of the vessel and its contents. *See Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (5th Cir. 1978); Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 15-7 (1987).

It should be noted that it is only when the law of finds is used to supplement the law of salvage that title to the actual *res* may be granted to the salvor. Under commercial salvage law, title always remains in the original owner. *See Cobb Coin Co. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 525 F. Supp. 186, 198 (S.D. Fla. 1981); *Platoro, Inc. v. Unidentified Remains*, 695 F.2d 893, 904 (5th Cir.), *cert. denied*, 464 U.S. 818 (1983); *Chance v. Certain Artifacts Found and Salvaged*, 606 F. Supp. 801, 808 (S.D. aG. 1984), *aff'd without opinion*, 775 F.2d 302 (11th Cir. 1985).

The majority opinion holding that determination of whether property has been abandoned is anything other than a question for the admiralty court to be decided based on all the facts and circumstances and that, as a matter of law, an express disclaimer is required underscores the horrendous and unacceptable conflict among the circuits and state courts on a very basic issue of admiralty law—an issue which undergirds the legal framework for numerous developing bodies of jurisprudence. Under the common and maritime law, a formal declaration of abandonment was unecessary, and abandonment was inferred from all the relevant facts and circumstances —and certainly could be determined on the basis of circumstantial evidence. *See* 1 Am. Jur. 2d *Abandoned, Lost*

and Unclaimed Property § 40. The conflict and confusion over these fundamental doctrinal principles call for the Court's guidance to the lower courts, which are frequently asked to address similar or related issues.

Page upon page of citations would be necessary to even attempt to cover the application of the law of finds to supplement the law of salvage under the doctrine of *animus revertendi* (the owner has no intention of returning). The majority opinion of the Fourth Circuit has rejected a factual inquiry into all the circumstances that other circuits have employed to determine abandonment of long-lost shipwrecks. The dissent cited over a dozen cases and treaties for the proposition that abandonment is a question of fact. Yet, this axiomatic principle is totally unmentioned in the majority opinion. And, making the conflict even more intolerable, it is not just the majority opinion, as it applies to finding "abandonment" of shipwrecks which is in error. Without, at the very least, a rebuttable presumption that all salvage from an abandoned shipwreck is itself "abandoned", there is no end to the litigation for a finder in possession. The majority opinion below creates the illogical and pernicious presumption that all recoveries from the admittedly abandoned *S.S. Central America* are subject to the subrogation rights of the insurance claimants.

The result of the conflict is that the admiralty courts are faced with the burden of litigation over very possibly hundreds of claims of purported successors-in-interest of owners, insurers of hull, cargo, passenger effects, etc., with the hapless finder forced to bear the enormous legal and economic burden of trying to disprove such stale and speculative claims. The "Herculean task", Pet. App. 49(a) at n.7 (Widener, dissenting) facing the admiralty courts in having to try to sort out claims hundreds of years old, although a task perhaps rewarding to enterprising counsel who scavenge such long-lost claims, will fall on the admiralty courts, and those who choose to

continue to come before them, rather than secreting their finds or shopping for other, more favorable, forums.

D. The Effects on Private Incentives for Development of Marine Technologies and Ocean Exploration

There is already enough of a burden on an explorer to research, search for, find, recover and prove abandonment of a long-lost vessel by its former owners or one or more subrogated insurance companies. Once these considerable burdens have been carried, it is illogical and unconscionable to require the finder in possession by "express disclaimer of title" to prove "affirmative abandonment" of each item recovered from the abandoned shipwreck. The consequences of such a rule in undermining certainty and predictability cannot help but destroy or diminish incentives for development of marine technologies and ocean exploration. Anne G. Giesecke, *To Be Or Not To Be Abandoned*, Sea Technology, Jan. 1993 at 93.

III. THE COURT SHOULD GRANT REVIEW TO ADDRESS DEVELOPING BODIES OF JURISPRUDENCE ON RIGHTS OF INDIVIDUALS AND PRIVATE ENTERPRISE IN THE DEEP OCEAN AND OUTER SPACE

In addition to the other reasons for granting review, the dramatic developments in deep ocean discovery, and the technologically (and legally) related opportunities for private enterprise in outer space further warrant the Court's review. These developing fields of federal jurisprudence are burgeoning based on precedents and policy considerations in more traditional maritime endeavors.

It is worth noting that the Court has remained aware of the need to keep federal law current with the development of technology. *See e.g., Kats v. United States*, 389 U.S 347 (1967) (applying Fourth Amendment to elec-

tronic eavesdropping devices). *See also Maryland v. Craig*, 497 U.S. 836 (1990) (Sixth Amendment and closed-circuit transmissions); *Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990) (life support systems and right to privacy); *Florida v. Riley*, 488 U.S. 445 (1989) (helicopter surveillance and Fourth Amendment).

The significance of technological developments for the *S.S. Central America* case, including landmark developments such as the new legal concepts of "telepossession" and "telepresence" (the use of live imaging through television, robots and remotely operated devices to achieve legal presence and control in extreme environments, including the deep ocean and outer space, where direct physical presence of human beings may be inefficient, impractical or too dangerous), thus makes review by the Court all the more important. *See* Drew F.T. Horrell, Note, *Telepossession is Nine-Tenths of the Law: The Emerging Industry of Deep Ocean Discovery*, 3 Pace Y.B. Int'l L. 309, 338 (1991). These developments, including as to the issue of abandonment, provide the foundation for further progress in the law applicable to exploration and utilization of the oceans and outer space, from deep-sea mineral recovery to recovery of abandoned satellites and space debris. *See id. at 357 and authorities cited therein. See also The Emerging Law of Deep Ocean Discovery*, Harvard Law Bulletin 20 (Winter 1991).

The developments in the *S.S. Central America* case have been repeatedly recognized by commentators for their significance for these developing bodies of jurisprudence. *See e.g.* Wayne White, *Mining Law for Outer Space*, Proceedings, Tenth Biennial Space Studies Institute/ Princeton Conference on Space Manufacturing (Fall 1991). Much of developing law for the exploitation and utilization of space by individuals and private enterprise, as opposed to governments, is developing by analogy to, and precedents in, admiralty and maritime law. See H.

De Saussure, *The Application of Maritime Salvage Law to the Law of Outer Space*, Proceedings of the 28th Colloquium on the Law of Outer Space, Stockholm 1985.

These considerations are made all the more significant by the Court's constitutional responsibilities under Article III, Section 2 with regard to admiralty and maritime jurisprudence. The majority opinion below impinges on the uniformity of admiralty law and the application of general maritime law. As the Court pointed out in *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 20 (1963):

> Article III of the Constitution vested in the Federal Courts jurisdiction over admiralty and maritime cases, and since that time, Congress has left to this Court the responsibility for fashioning the controlling rules of admiralty law.

The Court has long recognized its special role in fashioning the development of maritime law. A few years before *Fitzgerald*, in *S.W. Sugar and Molasses Co. v. River Term. Corp.*, 360 U.S. 411, 415 (1959), the Court had stated:

> The issue is one of importance in the development of the Law of Maritime as to which we have large responsibilities, constitutionally conferred . . . .

The Court's constitutional responsibilities are made all the more significant where, as here, the implications of the decision may substantially affect the uniformity of the general maritime law or otherwise impinge on the application of general maritime law—and, more importantly, bodies of federal jurisprudence developing to protect the rights of individuals and private enterprise in deep-sea and outer-space exploration and utilization. Resolution of the basic issue of abandonment is crucial to further development of the legal framework for these new fields of law, and, as a practical matter, indispensable to allowing individuals and private enterprise, not merely governments, to explore and responsibly utilize such remote environments.

CONCLUSION

The critical need for the Court's review of the issue herein was recently stressed by a leading admiralty expert from another State's bar:

> . . . More litigation will presumably result from this dispute over protection for this treasure-laden area.
>
> Other national and international incidents will be involved in the future. Beside the romance of buried treasure at sea and the stories surrounding it, there have been a plethora of legal battles since the technology for recovery has become so advanced. Submarine robots are now picking up treasure. *How the law of finds will turn out in cases on the high seas will need resolution by the Supreme Court. What proof is needed to show abandonment?*

Paul S. Edelman, *Admiralty Law: Who Gets Treasure Recovered From the Sea*, N.Y.L.J. Dec. 4, 1992 (emphasis added).

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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